IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Bail Appl..No. 6077 of 2007()

CRIME NO. 632/07 OF ADOOR POLICE STATION

APPLICANTS/ACCUSED NOS. 1 TO 5

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1. KUNJURAMAN, AGED 60 YEARS,
RESIDING AT OTTAPLAVUVILAYIL,
VATTAMALA THAZHATHIL,
THUVAYOOR NORTH MURI,
ERATHU VILLAGE, ADOOR TALUK,

2. SUNIL,S/O. NANU,
SUNIL BHAVANAM, THUVAYOOR NORTH MURI,
ADOOR TALUK,

3. MANOJ BHASKARAN, AGED 19 YEARS,
RESIDING AT KOTTAKKATTU
PUTHENVEETTIL,THUVAYOOR NORTH MURI,
ERATHU VILLAGE,ADOOR TALUK,

4. RAMACHANDRAN RAJESH, AGED 27 YEARS,
RESIDING AT KOCHUVILAYIL,
NEDUMKUNNU COLONY,
THUVAYOOR NORTH MURI,
ERATHU VILLAGE,ADOOR TALUK,

5. SURENDRAN SUBHASH, AGED 21 YEARS,
STUDENT, RESIDING AT VATTAMALA THEKKETHIL,
THUVAYOOR NORTH MURI,
ERATHU VILLAGE,ADOOR TALUK,

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.REVIKRISHNAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6077 of 2007

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Dated this the 18th day of October, 2007

O R D E R

Application for anticipatory bail. Altogether there are five petitioners. They apprehend arrest in a crime registered at the Adoor Police Station for offences punishable, inter alia, under Sections 324 and 307 r/w. 149 I.P.C. Now the allegation under Section 326 I.P.C. has also been included. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned Prosecutor, on instructions, submits that the second petitioner has already been arrested and therefore the prayer of the second petitioner has now become irrelevant. The learned Prosecutor submits that the crux of the allegations against the petitioners is that they, on account of prior animosity, attacked the victim, who had gone to a shop to purchase cigarette. Dangerous weapons were used and injuries, including a fracture, have been caused. The petitioners have to be arrested and interrogated. There are no circumstances justifying or warranting invocation of the extra

ordinary equitable discretion under Section 438 cr.P.C., submits the learned Prosecutor.

3. The learned counsel for the petitioners submits that there has been gross suppression of vital and relevant facts. Actually what transpired is that an incident took place on 22.7.2007 at about 7.30 p.m. One police constable by name Santhosh and one Babu were involved in that incident on 22.7.2007. The nephew of the first petitioner was attacked by them. He suffered injuries. It was an unprovoked attack. Apprehending that action may be taken against the said police constable Santhosh and the said Babu, totally false allegations have been raised against the petitioners by the said Babu on the next day, i.e. 23.7.2007. The said Babu must have suffered injuries in some other manner. According to the learned counsel for the petitioners, about the incident which took place on 22.7.07, in which the police constable Santhosh was involved, a prompt complaint was filed before the A.S.P., Adoor, copy of which is produced as Annex.A. On that complaint later, on 24.7.2007 another crime was registered under Section 323 I.P.C. as also under Section 3 of the SC/ST (Prevention of Atrocities) Act. The present allegations are made only as counter blast against the initiation of the earlier proceedings.

4. The learned Prosecutor took time to take instructions. He now accepts that on 24.7.07 a crime has been registered abotu an incident which took place on 22.7.07. Investigation into that crime is already complete. Final report has been filed raising allegations only under Section 160 Cr.P.C. That case has nothing to do with the present case. It is incorrect to contend that the defacto complainant has raised totally false set of allegations and that police, under the influence of the police constable Santhosh, is proceeding against the petitioners.

5. In the nature of the contentions raised, the learned Prosecutor was directed to place the case diary before me for my perusal. I have perused the case diary. At this early stage of investigation, I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that having considered the entire materials available, I am not persuaded to agree that there are any features available in this case, which would warrant or justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. The F.I. Statement is lodged by an alleged eye witness to the occurrence. The injuries found on the person of the victim also eminently support the said allegation. I am, in these circumstances, satisfied that this

is a fit case where the petitioners must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

6. The learned counsel for the petitioners submits that the petitioners apprehend harm to themselves if they surrender before the Investigating Officer. They may be permitted to surrender before the learned Magistrate to allay the apprehension of physical torture, submits the counsel. I am satisfied that appropriate directions to safeguard such apprehension aired by the petitioners' counsel can be issued.

7. In the result:

(1) This application is allowed in part.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioners shall surrender before the learned Magistrate on or before 25.10.2007 at 11 a.m. They may file applications for bail after giving sufficient prior notice to the learned Prosecutor in charge of the case. The police shall also be entitled to file application for custody, if necessary, from the learned Magistrate. The learned Magistrate shall pass appropriate orders on merits on such applications filed by both side.

(b) If the petitioners do not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 25.10.07 and the police shall be at liberty thereafter to arrest the petitioners and deal with them in accordance with law.

(c) If the petitioners were arrested prior to their surrender on 25.10.2007 as directed in clause (1) above, they shall be released on bail on their executing bonds for Rs. 25,000/- without any surety undertaking to appear before the learned Magistrate on 25.10.2007.

(R. BASANT)
Judge

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